

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ROBERT ANNABEL,

Plaintiff,

v.

JACK FROST, ET AL.,

Defendants.

No. 14-10244

District Judge Arthur J. Tarnow
Magistrate Judge R. Steven Whalen

ORDER

Before the Court is Plaintiff's Motion to Enforce Order by Court of Appeals for Costs [Doc. #99]. On March 27, 2017, the Sixth Circuit *conditionally* granted Plaintiff's motion for costs under Fed.R.App.P. 39(a)(4), stating as follows:

"The motion is conditionally granted, subject to the following: The motion is granted only to the extent the district court has or will assess the filing fee against Annabel in this case. *Certainly, if Annabel has not incurred any costs in this appeal, he is not entitled to a cost award.* Additionally, in light of the special scheme established in 28 U.S.C. § 1915(b) for assessing the filing fee on a prisoner, the appellees should submit the fee, *if and when assessed by the district court*, directly to the district court." [Doc. #95](Emphasis added).

Attached to Defendants' response [Doc. #101] is the affidavit of Kristen Cassidy, who is employed by the Michigan Department of Corrections ("MDOC") as an Accounting Technician in the Court Order section. She states that she reviewed the Plaintiff's Trust Account Statement (which is attached to her affidavit), and "[t]here are no entries in the Plaintiff's prisoner's trust account for a \$505 appellate filing fee." She further states that "[t]he MDOC has no records indicating a filing fee was ever assessed," and "the MDOC has no hold or lien on the Plaintiff's account to collect an appellate filing

fee....”

Under the Sixth Circuit order, then, Plaintiff is not entitled to any cost award because he has not incurred any costs. Defendants agree that if Plaintiff is at some point assessed a filing fee for the appeal, “the MDOC will, per the Sixth Circuit’s March 27, 2017 order, pay that fee directly to this Court.” *Response* [Doc. #101], at 2, Pg. ID 1142.

Therefore, Plaintiff’s motion [Doc. #99] is DENIED.

IT IS SO ORDERED.

Dated: January 17, 2018

s/R. Steven Whalen

R. STEVEN WHALEN
U.S. MAGISTRATE JUDGE

CERTIFICATE OF SERVICE

I hereby certify on January 17, 2018 that I electronically filed the foregoing paper with the Clerk of the Court sending notification of such filing to all counsel registered electronically. I hereby certify that a copy of this paper was mailed to non-registered ECF participants on January 17, 2018.

s/Carolyn M. Ciesla

Case Manager for the
Honorable R. Steven Whalen